

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	James Martin, et al	Group Art Unit:	3662
Serial No.:	10/530,695	Examiner:	Unknown
Filed:	October 13, 2003	Atty. Dkt. No.:	2088.001400
For:	METHOD AND APPARATUS FOR POSITIONING OF SEISMIC CABLES	Client Docket:	14.0223
		Confirmation:	7716

**REQUEST FOR RECONSIDERATION
OF DECISION ON PETITION UNDER 37 C.F.R. 1.47**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the “Decision On Petition Under 37 C.F.R. 1.47(a)” dated December 27, 2007, the Office refused Applicants’ petition under 37 C.F.R. §1.47(a) (“the Petition”), allegedly because it was not accompanied by the proper fee. No decision was reached on the merits, although the Office stated in passing that the showing “would not have been sufficient for a grantable petition”. No particular deficiency in Applicants’ proof was noted, however. The Office also noted that the inventor’s name was spelled differently on the U.S. Declaration than it was on the PCT application as published, and indicated that this should also be addressed.

A. Fee Payment

The Commissioner is authorized to withdraw the appropriate \$200 fee under 37 C.F.R. §1.47 from Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/2088.001400. This should cure the defect on which the rejection of the Petition was predicated. However,

Applicants note that the transmittal papers included a general authorization that should have permitted the Office to charge the petition fee to Deposit Account No. 50-0786/2088.001400.

More particularly, the “Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371”, in the signature block, has several boxes pertaining to fee payments. Applicants checked the box “a” indicating that a check was enclosed to cover the filing fee. Applicants also checked the box “c”, stating that “[t]he Commissioner is hereby authorized to charge any additional fees which may be required... to Deposit Account 50-0786/2088.001400”. Applicants did *not* check the box “b” which would have limited the authorization to application filing fees. Thus, the authorization was a general authorization to charge fees to the subject Deposit Account.

The Rules of Practice provide for just such a general authorization that will apply, with certain limited exceptions, throughout the pendency of the application. 37 C.F.R. §1.25. Petition fees such as the one under discussion do not fall into the exceptions. *Id.*; M.P.E.P. §509.01. Applicants therefore respectfully submit that the Commissioner was properly authorized to deduct the petition fee from the Deposit Account and that the Petition should have been considered in the first instance.

B. Spelling of the Inventor’s Name

The Office noted the difference in the spellings of the inventor’s name (“Kyrre Tjøem”) in the US Declaration (“Kyrre Tjoem”) and the PCT application as published (“Kyrre Thom”). There has not been any change in the name of the inventor. The differences in the spellings of the inventor’s name result from differences in transliteration.

The inventor is Norwegian. Although Norwegians also use a Latin alphabet, they supplement it with some letters/characters not used by the English language. One such is the character “ø”. The inventor’s surname, spelled in the alphabet used by the Norwegians, is “Tjøem”. One way to transliterate this is as a phonetic near-equivalent. That is the transliteration used by Applicants’ counsel in filing the PCT application—“Thom”. Another way to transliterate the name is with the nearest equivalent spelling. That is the transliteration used in the Declaration—“Tjoem”.

Applicants note that the difference in preferred transliterations may be a function of geography. Applicants' PCT counsel were British. The counsel who prepared the Declaration were US.

Thus, the different spellings of the inventor's name are just two different transliterations of the same name. "Kyrre Thom" and "Kyrre Tjoem" are the same name, and are acceptable, alternative transliterations of "Kyrre Tjøem". There consequently is no discrepancy between the US papers and the PCT papers. The spelling of the name, Kyrre Tjoem, on the U.S. Declaration is therefore proper. Furthermore, the "Examiner's Notes" in M.P.E.P. §201.03 indicate that a correction of inventorship is not needed in this context.

C. Adequacy of the Showing

As noted above, the Office stated that, "[i]n addition, the evidence submitted would not been [*sic*] sufficient for a grantable petition under 37 CFR 1.47(a)." The Office did not state in what way the evidence was lacking. The Office did cite M.P.E.P. §409.03(d), but Applicants' review of that provision has revealed no deficiency in the proof. The provision notably does not set forth any absolute requirements, presumably to preserve flexibility on the part of the Office to address the wide range of situations in which an inventor might refuse to sign.

The evidence originally submitted with the Petition establishes that there has been a rupture in the employer/employee relationship between the inventor Kyrre Tjøem and the assignees, WesternGeco LLC and WesternGeco AS. This is not Mr. Tjøem's first patent application and not his first refusal to sign papers for one. Mr. Tjøem has quit participating in the Assignee's patenting program because he feels entitled to additional consideration over and above his employment in violation of his employment agreement. Even though Mr. Tjøem is no longer communicating with the Assignee, the Assignee has presented Mr. Tjøem with a copy of the application and the opportunity to sign the papers. He has not even deigned to respond. In the context of the relationship between the parties, this can only be construed as a refusal to sign.

If the Office's complaint was that the Petition was not supported by sworn evidence, Applicants note that there is no requirement that the evidence be sworn. As such, the original statements should have sufficed. Applicants nevertheless provide the statement of Jeffrey E. Griffin in the form of a Declaration herewith out of an abundance of caution. Applicants also

provide a Declaration signed on behalf of Kyrre Tjøem by his co-inventor and former co-worker Svein A Frivik.

Applicants therefore request reconsideration of the petition. Applicants respectfully submit that the all requirements for the Petition were met by the original filing and that the showing was sufficient for its grant. However, Applicants herein cure the supposed deficiencies raised by the Office. Accordingly, Applicants pray that the Petition be granted.

Respectfully submitted,

Date: February 27, 2008

WILLIAMS, MORGAN & AMERSON
CUSTOMER NUMBER: 23720
10333 Richmond Dr., Suite 1100
Houston, Texas 77042
(713) 934-4053 ph

/Jeffrey A. Pyle/
Jeffrey A. Pyle
Reg. No. 34,904
Attorney for Applicants

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
James Martin, et al

Serial No.: 10/530,695

Filed: October 13, 2003

For: METHOD AND APPARATUS FOR
POSITIONING OF SEISMIC CABLES

Group Art Unit: Unknown

Examiner: Unknown

Atty. Dkt. No.: 2088.001400/14.0223

DECLARATION OF JEFFREY E. GRIFFIN

I, Jeffrey E. Griffin, the undersigned declare that:

1. I am currently employed as an attorney by WesternGeco LLC, the assignee of the present invention. My responsibilities include the handling of intellectual property matters, including patents and patent applications, for the assignee of the present invention as well as the sister-company to which Kyrre Tjøem is obligated to assign his interest in the present application, WesternGeco AS.

2. The inventor Mr. Kyrre Tjøem, as part of his employment agreement, has assigned all inventions made during his employment to his employer, WesternGeco AS. WesternGeco AS assigns its patent rights in the United States to WesternGeco LLC. A copy of a portion of his employment agreement, the Patent and Confidential Information Agreement (more specifically, Section 6) is attached.

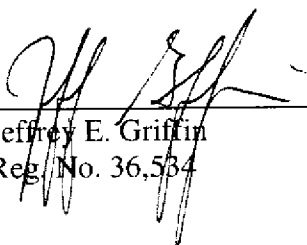
3. In a separate case, Mr. Tjøem has refused to sign a declaration, unless WesternGeco meets his demands, including a demand for consideration in addition to the agreed salary pursuant to the Patent and Confidential Information Agreement. See a request letter sent by WesternGeco on October 25, 2005 and a response letter from Mr. Tjøem's attorney on October

28, 2005, with a partial translation. Mr. Tjøem has not signed the declaration in that patent application.

4. Mr. Tjøem has failed to respond to several requests for signing the declaration for the present patent application since December 20, 2005.

5. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

February 12, 2008
Date



Jeffrey E. Griffin
Reg. No. 36,534

DECLARATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or the below named inventors are the original, first and joint inventors (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **METHOD AND APPARATUS FOR POSITIONING OF SEISMIC CABLES**, the Specification of which:

☒ is attached hereto.
☐ was filed on _____ as Application Serial No. _____.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56.

I hereby claim the benefit under Title 35, United States Code, § 120 and/or § 365 of any United States application(s) and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, § 1.56, which becomes available between the filing date of the prior application and the national or PCT international filing date of this application:

PRIORITY APPLICATION(S)			Priority Claimed
PCT/GB03/04499	PCT	October 13, 2003	Yes
(Number)	(Country)	(Date Filed)	Yes/No
0223673.5	GB	October 11, 2002	Yes
(Number)	(Country)	(Date Filed)	Yes/No

I HEREBY DECLARE THAT ALL STATEMENTS MADE OF MY OWN KNOWLEDGE ARE TRUE AND THAT ALL STATEMENTS MADE ON INFORMATION AND BELIEF ARE BELIEVED TO BE TRUE; AND FURTHER THAT THESE STATEMENTS WERE MADE WITH THE KNOWLEDGE THAT WILLFUL FALSE STATEMENTS AND THE LIKE SO MADE ARE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH, UNDER SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE AND THAT SUCH WILLFUL FALSE STATEMENTS MAY JEOPARDIZE THE VALIDITY OF THE APPLICATION OR ANY PATENT ISSUED THEREON.

Inventor's Full Name:	KYRRE TJOEM	
Inventor's Signature:	<i>Kyrre Tjoem</i> BY CO-INVENTOR AND FORMER CO-WORKER	
Country of Citizenship:		Date:
Residence Address: (street, number, city, state, and/or country)	SCHLUMBERGER HOUSE SOLBRAAVEIEN 23 N-1370 ASKER, NORWAY	
Post Office Address: (if different from above)		

Inventor's Full Name:	JAMES MARTIN	
Inventor's Signature:		
Country of Citizenship:	US	Date:
Residence Address: (street, number, city, state, and/or country)	15-9, HONMOKU-MAKADO, NAKA-KU, YOKOHAMA KANAGAWA 231-0827 JAPAN	
Post Office Address: (if different from above)		

Inventor's Full Name:	SVEIN ARNE FRIVIK	
Inventor's Signature:	<i>Svein Arne Frivik</i>	
Country of Citizenship:	US	Date:
Residence Address: (street, number, city, state, and/or country)	EKRAVN 42 N-0756 OSLO, NORWAY	
Post Office Address: (if different from above)		

Inventor's Full Name:	PETER TYLER	
Inventor's Signature:		
Country of Citizenship:	US	Date:
Residence Address: (street, number, city, state, and/or country)	48 BURNHAM DRIVE WHATSTONE, LEICESTERSHIRE LE8 6HY GREAT BRITAIN	
Post Office Address: (if different from above)		



APPENDIX A

PATENT AND CONFIDENTIAL INFORMATION AGREEMENT

THIS AGREEMENT is entered into by and between the company of Geco-Prakla management group of companies that is the legal Employer of Employee, acting on behalf of itself and its Affiliates (hereinafter collectively referred to as "Company"), and **Kyrre J. Tjøm** herein referred to as "Employee"), and shall become effective as of the date Employee is employed by Company.

In consideration of the employment or continued employment of Employee by Company and payment of a salary, wage or other remuneration, the parties agree as follows:

1. Employee will not remove from Company's facilities, except as required to perform work for Company, any materials that contain trade secrets or confidential information belonging to Company, including but not limited to invention records, computer software, formulas, processes, programs, methods of operations, customer information, logs, data, equipment, drawings, notes, manuals, or other materials. Employee agrees to return all such materials to Company immediately upon request and in any event upon termination of employment.
 2. Employee will not publish or disclose to anyone not employed by Company, nor use in any business other than Company's, any trade secrets or other confidential information or material of Company either during or after his or her employment, save for information which are or should come in the public domain through no fault of Employee or by breach of this agreement on the part of the Employee
 3. To protect Company against disclosure of such trade secrets and confidential information, and to shield Employee from pressure to use or disclose such secrets and information, Employee agrees that for a period of one year following time of actual resignation of his or her employment with Company, he or she will not become an employee, officer, director, or consultant to, nor serve in any other capacity, nor receive any compensation from, nor have any ownership interest in (all either directly or indirectly) any business, company, or other entity (including affiliates thereof) that is or is planning or preparing to be in the business of conducting seismic research or engineering, seismic data acquisition operations, seismic data processing or interpretation, or seismic equipment manufacturing, in any of the geographic areas where Company provides services or has a physical location.
- In the event that any restriction contained herein shall be found voidable by a court such restriction shall be modified to reduce the restrictions as to time and/or area so as to make said modified restrictions enforceable.,
4. Company has attempted to place no more than reasonable limitations on Employee's subsequent employment opportunities, consistent with Company's critical need to protect its legitimate business interests. However, Employee may subsequently find that such limitations have become a serious handicap in securing further employment. If such case arises, Employee agrees to make a written request to Company for a waiver of designated limitations before accepting employment in conflict with Paragraph 3 above, such request to include the name and address of the proposed employer and the location, position and duties of the proposed employment. A waiver may be granted by Company and will not be unreasonably withheld. In the event Company declines to grant such a waiver, Company undertakes to continue to pay Employee his existing base salary, for the one year period referred to in Paragraph 3 above. During such period, at Company's option, Employee may or may not be required to report to work.

APPENDIX A

5. Employee will promptly furnish to Company a complete record of any and all ideas, discoveries, inventions, writings, and improvements that he or she solely or jointly conceives or makes during the course of his or her employment with Company and that relate in any way to Company's business or field of activities.
6. Employee agrees to grant and hereby does grant and assign to Company or its nominee his or her entire right, title, and interest in and to all ideas, discoveries, inventions, writings and improvements coming within the scope of Paragraph 5 above, together with any and all world-wide patent rights and copyrights in such ideas, discoveries, inventions, writings, and improvements. At Company's request (and without further compensation beyond Employee's normal salary or wage), Employee agrees to (a) assist Company in preparing and prosecuting all applications for such patents and copyrights; (b) execute any and all instruments necessary to make, file and prosecute such applications; and (c) execute any and all instruments necessary to transfer title in any such applications to Company or its nominee.

Within limitations established by applicable law from time to time the Employee shall grant all rights and render all services described herein without further compensation apart from the agreed salary.

7. Employee will not disclose to Company, nor use in his or her work for Company, any confidential information of a third party that Employee is obligated to keep confidential.
8. This Agreement shall inure to the benefit of the successors and assigns of Company and be binding upon them and upon the heirs and legal representatives of Employee. Company's rights under this Agreement shall be fully assignable by Company to an Affiliate.
9. This Agreement shall supersede the terms of any prior agreement between Employee and Company and may be modified or amended only in writing, signed by an authorised representative of Company and by Employee.

"Affiliate" as used herein, means any corporation, now or in the future, directly or indirectly controlling, controlled, or under common control with Company, where "control" in relating to any corporation means the ownership, direct or indirect, of 50% or more of voting rights or securities.

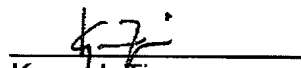
COMPANY:

EMPLOYEE:

BY:


Oluf Simonsen
Personnel Manager

BY:


Kyrre J. Tjøm

Date:

6/4/00

Date:

28/04/00

WesternGeco AS
Postboks 234
1372 ASKER

Malin Kjennerud

Vår ref: ARH Oslo, 28. oktober 2005

Det vises til Deres brev til oss av 25.10.05, mottatt i dag.

Vi har, etter det vi leser ut av Deres brev, mottatt etterlyst regelverk knyttet til overdragelseserklæringen.

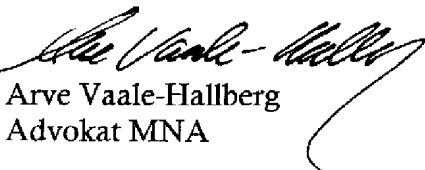
Vi savner imidlertid Deres uttrykkelige erklæringer om de forpliktelser De har overfor Tjøm ihht hans tidligere arbeidsavtale og lov av preseptorisk art i arbeidstakers favør, knyttet til den aktuelle rettighetsoverføring. I påvente av slik erklæring er vår klients holdning at hans signaturer fortsatt beror på Deres medvirkning. Tjøm er fortsatt rede til å signere på de tidligere angitte vilkår.

Det presiseres for ordens skyld at Tjøm ikke setter som noe vilkår at han i sammenheng med den aktuelle signeringen skal tilkjennes et konkret vederlag, kun at De anerkjenner hans rett basert på arbeidstakeroppfinnelsesloven § 7, supplert med hans tidligere arbeidsavtale.

Det er på denne basis fullstendig grunnløst å hevde, slik De gjør i Deres brev, at fortsatt unnlatelse av signering fra Tjøms side vil bli ansett som en nektelse av å etterkomme de plikter han har etter sitt tidligere arbeidsforhold. Av samme hensyn kan vi heller ikke se noe grunnlag for å holde Tjøm ansvarlig for følger av eventuell videre forsinkelse.

De er velkommen til å kontakte meg pr telefon eller i et mulig møte om saken dersom De skulle ha behov for nærmere avklaringer.

Med hilsen
Tekna - Teknisk-naturvitenskapelig forening
Juridisk kontor



Arve Vaale-Hallberg
Advokat MNA

02/13/06 15:01 FAX 713 689 6100

APPLIED IMAGING

006



Solbråveien 23
P.O. Box 284
1372 ASKER

October 25, 2005

Dear Mr. Hallberg,

With reference to your email dated 30th of September 2005 please find enclosed the requested US Codes referred to in the Declaration and Power of Attorney for Patent Application. You will find more information on Manual of Patent Examining Procedure at: <http://www.uspto.gov/wcb/offices/pac/mpep/mpep.htm>. Look at section 600 et seq. to find information on declarations. Appendices L and R have the relevant laws together with <http://www.law.cornell.edu/uscode/html/uscode18/uscode18 USC sec 18 00001001--000-.html>.

Please sign and return the Assignment and Declaration and Power of Attorney for Patent Application in accordance with obligations set out in the Patent and Confidential Information Agreement signed by Kyrre Tjøm April 24, 2000. Paragraph 6 of this agreement is clear in stating that Tjøm shall sign all paperwork necessary to process the patent application. The delay of Tjøm's signature has already caused harm to WesternGeco by reducing the term of the patent and increasing costs to obtain the patent. We will take his failure to return the signed documents by November 3, 2005 as a refusal to sign. This may result in a loss of the patent application.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Malin Kjennerud'.

Malin Kjennerud
Attorney
WesternGeco